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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM A. CAMERON,

Defendant and Appellant.

B214398

(Los Angeles County Super. Ct.  
No. BA335863)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Carol Rehm, Jr., Judge. Affirmed.

Julia J. Spikes, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Scott A.  
Taryle and David Zarmi, Deputy Attorneys General, for Plaintiff and Respondent.

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The jury found defendant William A. Cameron<sup>1</sup> guilty of assault with a deadly weapon upon Dustin Rex and Dane Rex<sup>2</sup> (Pen. Code, § 245, subd. (a)(1)).<sup>3</sup> The jury also found defendant personally used a deadly weapon (§ 12022, subd. (b)(1)) as to both counts and personally inflicted great bodily injury (§ 12022.7, subd. (a)) as to Dustin. Defendant was sentenced to seven years in state prison.<sup>4</sup>

In this timely appeal, defendant contends the admission of his prior statement, “I stabbed a guy in Boston with this knife,” violated state evidentiary law as well as his right to due process under the federal constitution. We conclude admission of the evidence was not an abuse of discretion and did not deny defendant due process. We affirm the judgment.

## **STATEMENT OF FACTS**

### **Prosecution Case**

Dane and Dustin went to a party at a friend’s home in West Hollywood on February 2, 2008. Defendant, who was also at the party, was a stranger to them. The

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<sup>1</sup> This is defendant’s second trial in this matter. In the first trial, the jury acquitted defendant of the attempted murders of Dustin Rex and Dane Rex and deadlocked on two counts of assault with a deadly weapon. (Pen. Code, § 245, subd. (a)(1).)

<sup>2</sup> As the victims are brothers sharing the same last name, we refer to them by their first names or, collectively, as the brothers.

<sup>3</sup> Hereinafter, all statutory references will be to the Penal Code, unless otherwise indicated.

<sup>4</sup> Defendant was sentenced to the upper term of four years, plus three years for the personal infliction of great bodily injury enhancement on the assault with a deadly weapon offense involving Dustin. On the charge involving Dane, defendant was sentenced to the upper term of four years to run concurrent with the sentence imposed for the assault on Dustin.

brothers were from New York, and defendant was from Boston. Defendant drank throughout the evening.

Defendant had a pocket knife, which he played with and waved around. The brothers saw him with it. The blade was four or five inches long and very sharp. Defendant “made a comment about how he had stabbed somebody in Boston with that same knife.” Defendant acted like a tough guy, as if he “had something to prove.” The brothers joked with defendant about his Boston accent, and defendant went along with the joking. Later, defendant showed off his tattoos, bragged about being Irish, showed off his knife again, and used it to chop at bushes. At 2:00 a.m., someone brought up the rivalry between the Yankees and the Red Sox. Dane and defendant made comments to each other about which team was better. Dane thought they were all just having fun making disparaging jokes about each other’s teams. Dane was not trying to provoke defendant. However, it appeared to Dustin that Dane and defendant were getting agitated, so he joined them and stood behind defendant, facing Dane.

Suddenly defendant leaped up and stabbed Dustin in the neck, which severed the carotid artery. No one had touched defendant before he attacked Dustin. Dustin did not hit defendant until after defendant attacked him with the knife. Holding up Dustin’s arms and pushing him back, defendant continued to stab Dustin repeatedly in a downward punching motion. Blood squirted everywhere. Dane pulled defendant off of Dustin and was himself stabbed twice in the chest. Defendant ran out the back door and was arrested trying to get away in a cab.

The police officer who booked defendant determined after a thorough physical examination that defendant was not injured. His eyes were not swollen, they were just shut a little bit from the late hour, drinking, and exertion. There was no abrasion under the chin, and the marks on his face were blood from the victim, not abrasions. Defendant told the police officer he was not injured. Defendant stated, “I know I am going to do some time for what I have done. I guess I deserve it.”

In addition to the severed carotid artery,<sup>5</sup> Dustin's jugular vein was damaged, and he had stab wounds in his back, arm, and abdomen. These were penetrating, or puncturing, stab wounds, not wounds made by slashing. Dustin bled profusely, suffered a stroke, and was in extremis. Emergency treatment at the hospital saved his life. Dane suffered puncture wounds from the stabbings to his chest.

## **Defense Case**

Dane made fun of defendant about his Boston accent and the Red Sox, even though defendant was not an avid Red Sox fan. Defendant complained about Dane's treatment of him to another guest, Richard Rizzo, and Rizzo tried to smooth things over with Dane. However, Dane persisted in riding defendant throughout the night.

When Dane kept trying to provoke defendant, defendant and Dane argued. Defendant was drunk. Becoming very aggressive, Dane waived his brother over. Defendant looked and saw Dustin behind him. Dane threw the first punch, hitting defendant. Defendant did not have his knife out when the fight began.

The brothers, who were taller than defendant, surrounded defendant. Defendant was knocked to the ground by the numerous blows that the brothers rained on his face and head. Defendant tried to extricate himself, but was prevented from doing so by blows from the brothers and others. Defendant feared these "punk rocks"<sup>6</sup> were going to stomp him to death. It was not until the fight had escalated and he had been beaten down to the ground that defendant took out his knife and swung it so that he could get out of there alive. After defendant extricated himself from the fight and tried to leave through the back door, Dane attacked again, but defendant managed to get out the door. Several

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<sup>5</sup> The carotid artery is the main blood supply to the brain.

<sup>6</sup> Dane sported a punk rocker look at the party. He wore a painted, black leather motorcycle jacket and a metal-studded leather belt, had jewelry around his neck, and wore a fake rifle bow and miniature set of brass knuckles for decoration.

blocks away, when he got into the cab, defendant threw the knife down on the sidewalk because he thought he was safe.

In photographs taken after the stabbing, defendant's face and head area appeared to have bruises, abrasions, and other marks of injuries, all from the result of the beating he received.

In his trial testimony, defendant admitted he inflicted the stab wounds on Dustin and Dane, but denied he made any statement to the police that he guessed he would have to do a lot of time for what he did, as he deserved it. Defendant admitted he swung the knife on purpose and knew, if he hit someone while swinging the knife, he could hurt that person. Defendant denied he played with the knife at the party and denied he said he stabbed someone with the knife in Boston.

## **DISCUSSION**

### **Evidence of Defendant's Statement**

Defendant contends admission of his statement that he stabbed a man in Boston with the knife he displayed was irrelevant, more prejudicial than probative, and violated due process. We disagree with the contentions.

#### **A. Evidence Code Section 402 Motion**

The prosecution made a motion pursuant to Evidence Code section 402 to admit the following statements defendant made at the party prior to the scuffle: "I stabbed a guy in Boston with this knife. I am wanted for murder out there." The prosecution argued the statements were relevant to prove the element of assault that "[w]hen the defendant acted, he was aware of facts that would lead a reasonable person to realize that his act, by its nature, would directly and probably result in application of force." Moreover, the statements were relevant to defendant's statement of mind, in that the defense was self-

defense. The prosecution argued the probative value of the evidence was not substantially outweighed by the possibility of undue prejudice. Defendant objected that the statement he was wanted for murder in Massachusetts was more prejudicial than probative, under Evidence Code section 352, because it was not true and the jury would believe defendant is a murderer. Defendant also objected admission of the statements would result in an undue consumption of time, confuse the issues, and mislead the jury.<sup>7</sup>

The trial court ruled the statements were a party admission under Evidence Code section 1220 and were relevant to prove an element of the offense charged and to rebut the defense of self-defense. The statement that defendant assaulted a man in Boston was not prejudicial under Evidence Code section 352, because it did not tend to evoke an emotional bias against defendant apart from its relevance. Defendant's statement that he was wanted in Boston for murder was prejudicial, because it could confuse the jury on the issue of what defendant was charged with in this case. The court ruled the statement that defendant stabbed a man in Massachusetts admissible, and the statement that defendant was wanted for murder in Massachusetts inadmissible.

## **B. Prosecution's Argument to the Jury**

Both Dane and Rizzo testified defendant remarked at the party that he had stabbed somebody in Boston with the knife he was displaying. The prosecution argued this evidence was important. The facts that the brothers knew defendant had a knife and defendant told Dane he had stabbed someone with it before "make[] it less likely that either [brother] would be an initial aggressor who would be the person who would start a fight with somebody who had a knife."

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<sup>7</sup> Respondent contends defendant's objection only went to the statement he was wanted for murder, and, accordingly, defendant has forfeited any objection to admission of his statement that he stabbed someone with the knife. Based on our review of the Evidence Code section 402 hearing, we conclude defendant's objection went to both statements, and therefore he did not forfeit his objection.

Defendant's statement that he stabbed someone else with this knife in Boston is direct evidence of the third element of assault, that "he was aware of facts that would lead a reasonable person to realize his act would directly and probably result in application of force to someone." "[H]e had stabbed somebody else with this knife in Boston. So he knows what a knife can be used for. That if you stab somebody with a knife, it will probably result in the application of force again."

Concerning the jury instruction "that says, you don't have a right to self-defense if you provoke the fight with intent to create an excuse and use force[,] [s]ome of you may think that is possibly what happened here. I mean [defendant] had stabbing in mind that night even before this fight. He was telling people he had stabbed somebody with this knife. And again he would not have a right to self-defense if this was a fight he instigated was just a [ruse] to use this self-defense argument later on."

## **Standard of Review**

"On appeal, we apply an abuse of discretion standard of review to any ruling by a trial court on the admissibility of evidence." (*People v. Guerra* (2006) 37 Cal.4th 1067, 1140.) "A trial court abuses its discretion when its ruling 'fall[s] "outside the bounds of reason."' [Citations.]" (*People v. Waidla* (2000) 22 Cal.4th 690, 714.) "A finding as to admissibility of evidence under Evidence Code section 352 is left to the sound discretion of the trial court and will not be disturbed unless it manifestly constituted an abuse of discretion." (*People v. Siripongs* (1988) 45 Cal.3d 548, 574.)

## **Relevant Evidence and Evidence Code Section 352**

""Only relevant evidence is admissible [citations], and all relevant evidence is admissible unless excluded under the federal or California Constitution or by statute. [Citations.] Relevant evidence is defined in Evidence Code section 210 as evidence "having any tendency in reason to prove or disprove any disputed fact that is of

consequence to the determination of the action.” The test of relevance is whether the evidence tends “‘logically, naturally, and by reasonable inference” to establish material facts . . . . [Citations.]” [Citation.] The trial court has broad discretion in determining the relevance of evidence . . . .”’” (*People v. Carter* (2005) 36 Cal.4th 1114, 1166–1167.) Relevant evidence may nonetheless be excluded under Evidence Code section 352 at the trial court’s discretion if ‘its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.’ . . . (*People v. Ledesma* (2006) 39 Cal.4th 641, 701.)” (*People v. Richardson* (2008) 43 Cal.4th 959, 1000-1001.)

“‘The “prejudice” referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues. In applying section 352, “prejudicial” is not synonymous with “damaging.”’ [Citation.]” (*People v. Karis* (1988) 46 Cal.3d 612, 638; see also *People v. Kipp* (2001) 26 Cal.4th 1100, 1121.)

### **Admission of the Statement was not an Abuse of Discretion**

The trial court’s determination that defendant’s statement was relevant, had substantial probative value, and was not unduly prejudicial within the meaning of Evidence Code section 352 was not an abuse of discretion.

The evidence was relevant and probative. The claim of self-defense was rebutted by the inference from the statement that defendant carried the knife to the party with an offensive purpose. Moreover, Dane knew defendant had used the knife to stab someone in Boston because he heard defendant brag about it. It is reasonable to infer Dustin knew this as well, because he was present when defendant showed off his knife and made the remark. This evidence rebutted the claim of self-defense, because it tended to support an inference that, aware that defendant was carrying a knife he had stabbed someone with previously, the brothers did not start the fight with defendant.



Further, one of the elements of assault with a deadly weapon was “[w]hen the defendant acted, he was aware of facts that would lead a reasonable person to realize that his act by its nature would directly and probably result in the application of force to someone.” Defendant’s statement was relevant to prove this element, because the fact he stabbed someone with his knife previously tended to establish he knew that stabbing a person with this knife would result in the application of force to that person. *People v. Williams* (2001) 26 Cal.4th 779, 790, cited by defendant, is not on point. In that case, our Supreme Court held it was error to give an assault instruction which permitted conviction “even if [the defendant] did not actually know the facts sufficient to establish that his act by its nature would probably and directly result in a battery.” Here, the jury was correctly instructed, and defendant’s statement showed defendant did actually know sufficient facts to establish that his act would result in a battery.

Defendant’s entire statement went to the heart of the issue of self-defense and of one of the elements of assault with a deadly weapon. As such, the statement was not “likely to evoke an emotional bias against defendant unrelated to its relevance on material issues[.]” (*People v. Kipp, supra*, 26 Cal.4th at p. 1122.)

As the statement was relevant and not more prejudicial than probative, its admission into evidence was not an abuse of discretion.<sup>8</sup>

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<sup>8</sup> To the extent defendant argues admission of the statement violated due process, we disagree with the contention. As the probative value of the evidence was not substantially outweighed by the probability its admission would create a substantial danger of undue prejudice, its admission did not render the trial fundamentally unfair. (See *People v. Partida* (2005) 37 Cal.4th 428, 436.)

## **DISPOSITION**

The judgment is affirmed.

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J.

WEISMAN, J.\*

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\* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.